

APR 14 2006

NOT FOR PUBLICATION

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

STEPHEN BENNETT,

Petitioner - Appellant,

v.

DON HELLING,

Respondent - Appellee.

No. 05-16188

D.C. No. CV-02-00663-DWH

MEMORANDUM^{*}

Appeal from the United States District Court
for the District of Nevada
David W. Hagen, District Judge, Presiding

Submitted April 5, 2006^{**}

Before: HAWKINS, McKEOWN and PAEZ, Circuit Judges.

Nevada state prisoner Stephen Bennett appeals from the district court's judgment dismissing his 28 U.S.C. § 2254 petition as time-barred. We have

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

^{**} This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

jurisdiction pursuant to 28 U.S.C. § 2253. We review de novo, *Nardi v. Stewart*, 354 F.3d 1134, 1140 (9th Cir. 2004), and we affirm.

Bennett contends that he is entitled to equitable tolling during the periods of February 18, 2000 through July 19, 2000, and December 18, 2001 through December 17, 2002, because his medical condition rendered it impossible to file a timely petition. The record reveals that Bennett filed inmate grievances and litigated his state court post-conviction petition during the first period, and maintained voluntary prison employment during the second period. This contradicts his assertion that he was incapable of drafting the instant petition during these times. *See Pace v. DiGuglielmo*, 125 S. Ct. 1807, 1814 (2005).

In the alternative, Bennett contends that we should remand for an evidentiary hearing to resolve any factual issues regarding his equitable tolling argument. Because the district court sufficiently developed the record, no evidentiary hearing is necessary. *See* 28 U.S.C. § 2254(e)(2).

AFFIRMED.